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## VIA ECF

The Honorable Katherine Polk Failla  
United States District Judge  
Thurgood Marshall United States Courthouse  
40 Foley Square  
New York, New York 10007

Re: *Petróleos de Venezuela, S.A. et al. v. MUFG Union Bank, N.A. et al.*, No. 1:19-cv-10023

Dear Judge Failla:

I write on behalf of Defendants in response to Plaintiffs' February 28, 2025 letter demanding public disclosure of the identity of Defendants' new expert, [REDACTED]. ECF No. 351. This Court already held that "there is sufficient evidence of potential harm" to protect the identity of Defendants' other expert, ECF No. 207, [REDACTED].

ECF No. 335 ¶ 3. [REDACTED], too, has well-founded concerns that disclosure of [REDACTED] identity would risk retaliation and endanger [REDACTED] and [REDACTED] family's personal safety. Defendants have pointed to concrete and very real risks from a despotic regime. Plaintiffs, on the other hand, have articulated no legitimate need to publicize [REDACTED] identity, no prejudice from this Court's prior anonymization, and no way in which their ability to rebut [REDACTED] evidence would be hampered by [REDACTED] public anonymity. We can only assume that Plaintiffs' position is a litigation tactic because they already know [REDACTED] identity, and through minimally-redacted filings, the public is already fully apprised of [REDACTED] positions on Venezuelan law.<sup>1</sup>

Since this Court found in July 2020 "sufficient evidence of potential harm to Defendants' [other] expert that protection of the expert's identity is warranted," ECF No. 207, the situation in Venezuela—and the risk to individuals involved in this litigation—has only gotten worse. Plaintiffs acknowledged "the Maduro regime[s] well-documented record of persecution." ECF No. 172. At 1 But in May 2023, the Maduro government criminalized involvement in "actions, negotiations, offers, agreements, commitments, or acts of administration, sale, or disposition of any asset, right, or interest of the Republic or its entities located abroad," with violations punishable by up to 20 years' imprisonment. ECF No. 319 at 9; *see also* Ex. 1. In June 2024, the Maduro regime declared its intent "to exercise actions against any company or person who might purchase the shares, facilitates the purchase or negotiates CITGO's assets, as well as against those responsible for the plundering of this important asset for the present and the future of all Venezuelans." Ex. 2. A similar law was passed in November 2024. Ex. 3.

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<sup>1</sup> Plaintiffs had agreed in a January 29 meet-and-confer to consider whether disclosure of [REDACTED] name to a broader group of their clients would satisfy their purported concerns about designating [REDACTED] identity as "Attorneys' Eyes Only." Yet without further conferral, they filed their letter motion on February 28.

There is every reason to believe that the Maduro regime will punitively enforce these laws, and resort to even worse extralegal tactics. After the most recent elections in July 2024, the Maduro regime is estimated to have taken nearly 2,000 political prisoners,<sup>2</sup> held in brutal conditions.<sup>3</sup> That is more than five times the number of political prisoners in 2020.<sup>4</sup> The Maduro regime is even reported to have carried out multiple extraterritorial assassinations.<sup>5</sup>

Against this backdrop, Plaintiffs' contention that there is no "concrete risk of harm" to [REDACTED] is both factually and legally baseless. Factually, Plaintiffs' assertion that [REDACTED] "is not opposing the Maduro government and . . . [REDACTED] opinion supports the Maduro government," ECF No. 351 at 3, is false. The Maduro regime opposes the claims of the 2020 Noteholders, and is therefore opposed to [REDACTED] (and fully aligned with the 2015 National Assembly). See Def's Supp. Br. 14–15, ECF No 337. It has every reason to retaliate against [REDACTED] for [REDACTED] contrary position. Although [REDACTED]

Moreover, [REDACTED]

And Plaintiffs have accused Venezuelans supporting the validity of the 2020 Notes as engaged in a corrupt "conspiracy" with the Maduro regime, carrying out "treason to the homeland," and "play[ing] for both teams." ECF No. 173 at 1–2. [REDACTED]

Legally, federal courts have never required parties to show a "concrete" inevitability of harm as a result of the disclosure of a witness's identity—even a "remote" risk of retaliation suffices to maintain confidentiality. *In re Air Cargo Shipping Servs. Antitrust Litig.*, 931 F.Supp.2d 458, 466–67 (E.D.N.Y. 2013); see also *In re City of New York*, 607 F.3d 923, 936 (2d Cir. 2010) (even greater protections that "attorneys' eyes only" were warranted when safety interests were involved); see also Protective Order, ECF No. 53, ¶ 2 (allowing attorneys' eyes only designation whenever there is a "risk" of injury). Indeed, courts routinely allow sealing to protect witnesses' safety. See ECF No. 173 at 3 (collecting cases). "[C]ompelling reasons' sufficient to outweigh the public's interest in disclosure and justify sealing court records exist when such 'court files might have become a vehicle for improper purposes,' such as the use of records to gratify private spite, promote public scandal, [or] circulate libelous statements." *Kamakana v. City & Cty. of Honolulu*, 447 F.3d 1172, 1179 (9th Cir. 2006) (quoting *Nixon v. Warner Commc'ns, Inc.*, 435 U.S. 589, 598 (1978)). The public interest in disclosure is especially reduced where, as here, the public is not deprived of any pertinent information—

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<sup>2</sup> Rafael Uzcátegui, *Venezuela's Record Political Prisoners Await the Unknown*, America's Quarterly (Oct. 29, 2024), <https://www.americasquarterly.org/article/venezuelas-record-political-prisoners-await-the-unknown/>.

<sup>3</sup> Norberto Aredes, *Jailed Venezuelan Activist Details Brutality of Prison Life*, BBC (Jan. 8, 2025), <https://www.bbc.com/news/articles/ckgz5l6l7k7o>.

<sup>4</sup> U.S. Dep't of State, 2020 Country Reports on Human Rights Practices: Venezuela (2020), <https://www.state.gov/wp-content/uploads/2021/10/VENEZUELA-2020-HUMAN-RIGHTS-REPORT.pdf>

<sup>5</sup> Jack Nicass, Pascale Bonnefoy, & John Barlett, *Maduro Government Accused of Dark New Tactic: Assassinations*, N.Y. Times (Feb. 10, 2025), <https://www.nytimes.com/2025/02/10/world/americas/venezuela-maduro-murder-chile.html>; see also Nayara Batschke, *Chile Seeks to Extradite a Suspect from the US over the Killing of a Venezuelan Dissident*, A.P. News (Feb. 27, 2025), <https://apnews.com/article/chile-venezuela-killing-abduction-maduro-court-extradition-us-trump-4a3a84d31087834c9d797b7f0cfa7d5f>.

██████ opinions and all supporting materials have been fully disclosed to the public, and Plaintiffs' counsel and experts are aware of the identity of ██████ and are able to attempt to challenge ██████ statements and opinions. *See* ECF No. 173 (collecting cases permitting redaction of non-party witness names, including experts, when their identities are not at issue).

Contrary to Plaintiffs' letter, ██████

██████ Had Plaintiffs raised this issue during the parties' meet and confer (which they did not), Defendants would have explained that, ██████

██████ As discussed above, the Maduro regime has since then become even more oppressive. Plaintiffs emphasize that ██████

Plaintiffs' suggestion that Defendants improperly applied redactions without Court permission is similarly baseless. This Court's Protective Order, ECF No. 53, provides that any information designated as Confidential or Attorneys' Eyes Only "shall be e-filed under seal and kept under seal until further order of this Court." ¶ 4.a. Defendants complied with this order, consistent with their designation of ██████ identity as Attorneys' Eyes Only. Notably, "Plaintiffs do not object to the other redactions made in Defendants' supplemental brief," which covered information *Plaintiffs* designated confidential. Plaintiffs' Letter at 1 n.1; *see* ECF No. 347 at 4, 8–9, 21, 28. Indeed, Plaintiffs demanded Defendants redact material going to the very heart of this case—Plaintiffs' admissions that ██████, that the ██████, and that Plaintiffs ██████. *See, e.g.,* ECF No. 139 ¶¶ 101, 121–122, 220–222, 224, 255–257, 349–356; *see also* ECF No. 138 (sealed version). This selective approach of shielding damning evidence from public view while trying to compel disclosure of information with minimal value to the public, but meaningful risk of personal harm, belies Plaintiffs' professed interest in "public access."

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Plaintiffs' efforts to needlessly put ██████ and ██████ family at risk should be rejected. It would be cold comfort indeed if Plaintiffs' blithe confidence about ██████ and ██████ family's security indeed turns out to be misplaced. We would be pleased to submit any additional information that the Court requires.

Respectfully submitted,

/s/ Christopher J. Clark

Christopher J. Clark

cc: Counsel of Record (Via ECF)